

201211421
Scott Berger

A group of friends were standing in front of their building when officers arrived and asked them for identification proving they lived there. Thinking one officer had told him “You can go,” one boy walked away, and an officer grabbed him and handcuffed him. While he was being arrested, his cousin started recording the incident on a cell phone. Officer Berger cursed at the person recording and used a racial slur. In his interview, he denied cursing or using a racial slur. Upon watching the recording, he stated that he was not the one who had cursed (though other officers confirmed it was him). He admitted that it was his voice using the racial slur, but stated that he was in “disbelief” that he could have said such a thing because his girlfriend is Hispanic and he has worked in the South Bronx his entire career.

The CCRB substantiated allegations that PO Berger pointed his gun and used a racial slur. It also found that he had made a false official statement when he lied about what he said before being shown the video. He was tried at the Administrative Prosecution Unit and punished by forfeiting 10 vacation days.

Interview Details

Complainant/Victim:

- *At the time of the incident, [REDACTED] was a [REDACTED]-year-old Hispanic male with black hair and brown eyes who stood 6', 208 lbs.*
- *He is employed as a [REDACTED], where he has been employed for the last four years.*

CCRB Statement

[REDACTED] was interviewed at the CCRB on October 9, 2012. At approximately 12:38 a.m. on August 31, 2012, [REDACTED] and four of his friends – identified by him only as their street names, “[REDACTED]” “[REDACTED]” “[REDACTED]” and “[REDACTED]” – were waiting outside [REDACTED] in the Bronx for [REDACTED] brother, [REDACTED] to come downstairs from his fourth-floor apartment. [REDACTED] and his friends were all standing to the left of the entrance to the building and they were not blocking pedestrian traffic because nobody was either entering or leaving the building; he marked on a photograph exactly where he and his companions were positioned in relation to the building. [REDACTED] denied that he or any of his friends had consumed alcohol or drugs or were intoxicated. Nobody was drinking or smoking in front of the building. [REDACTED] was wearing a blue Yankees cap, a black t-shirt, and blue jeans and he held no objects in his hands.

The group stood in front of the building for about fifteen minutes before three uniformed officers arrived on foot and approached the group of men. “PO Cruz” (identified by [REDACTED] via nameplate and described as a uniformed Hispanic male who appeared to be between 30-32 years-old and who stood 5’11”, 190-200 lbs.) approached [REDACTED] and asked him to produce his identification card. [REDACTED] told PO Cruz that he did not have his identification card with him, and PO Cruz asked, “What do you mean you don’t have your ID?” PO Cruz then told [REDACTED] that he owned the sidewalk that he was walking on.

PO1 (described as a uniformed Hispanic female) turned to [REDACTED] who was standing several feet away from the group, and said, “You can go.” Because nobody asked [REDACTED] for his identification card, and because [REDACTED] thought that PO1 was instructing him to leave, he turned away from PO Cruz and PO1 and walked towards the building and reached for the door. As he did so, PO1 grabbed [REDACTED] by the arms without saying anything and [REDACTED] heard the sound of handcuffs so he tightened his arms and said, “Why you locking me up?” [REDACTED] did not pull his arms away from PO1, and he placed his arms behind his back after PO1 ordered him, “give me your arms.”

PO1 handcuffed [REDACTED] behind his back, and PO Berger (identified by [REDACTED] via nameplate and described as a slim uniformed white male who appeared to be between 25-30-years-old and who stood 5’11”, 170-180 lbs.) walked over in response to PO1’s command for [REDACTED] to surrender his arms. PO Berger grabbed the back of [REDACTED] neck with his right hand and retained his grasp of it for about twenty seconds. [REDACTED] stated that his breathing was restricted, but he also stated that, in response to PO Berger grabbing his neck, he yelled, “What are you doing? I’m already in handcuffs! I’m alright! You haven’t even read my me rights! Why am I being arrested?” PO Berger placed his left hand onto [REDACTED] arms, and while holding the back of [REDACTED] neck with his right hand, pressed [REDACTED] forward so that his chest and the left side of his face made contact with a pillar of the building. PO Berger then slammed [REDACTED] against the metal door to the building and [REDACTED] shoulder made contact with the door. [REDACTED] yelled, “relax, relax. I’m already handcuffed.” [REDACTED] sustained no injuries as a result of the physical force PO Berger used against him and he did not seek any medical treatment.

Behind PO Berger and [REDACTED] stood [REDACTED] and [REDACTED] the cousin of [REDACTED] sister-in-law. [REDACTED] was holding his cell phone and was using it to record what PO Berger was doing to [REDACTED] as he stood about a sidewalk’s-length away from the building. [REDACTED] stood behind [REDACTED] and used his iPad to record what was happening. When PO Berger realized that [REDACTED] was recording the incident, he removed his gun from his holster, turned towards [REDACTED] pointed his gun at his chest for about three seconds, and yelled two times, “Get the fuck out of here!” PO Berger used no other profanity. PO Berger returned to [REDACTED] and pulled his back of his shirt up over his head from behind so that [REDACTED] could not see; [REDACTED] insisted that this would be depicted in the video footage [REDACTED] recorded. [REDACTED] moved his head in an effort to pull his head out from underneath his shirt and PO Berger pushed him one more time in

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the back against the wall to the building. Though [REDACTED] felt no hard objects touching his back, [REDACTED] told him following the incident that PO Berger held his gun in his hand and pressed it against [REDACTED] back.

[REDACTED] was removed to the stationhouse with all of his friends and each person was released with a summons for disorderly conduct about two hours later. [REDACTED] saw PO1 write the summons. The only pain [REDACTED] felt was pain to both of his wrists, which he stated was caused from the diagonal placement of the handcuffs across his wrists. He did not seek medical treatment and he self-medicated the pain with pain-killers.

[REDACTED] provided contact information for [REDACTED] and [REDACTED] but he did not have contact information for [REDACTED] or [REDACTED] and he did not know their legal names. [REDACTED] provided [REDACTED] address: [REDACTED] and telephone number: [REDACTED]. He stated that [REDACTED] had emailed him the video footage he captured using his iPad, and [REDACTED] agreed to forward it to the CCRB so that it could be added to the investigative case file.

Interview Details

Witness Officer: PO VERONICA GUACHICHULLCA

- *At the time of the incident, PO Guachichullca was a 25-year-old Hispanic female with black hair and brown eyes who stood 5'4", 145 lbs.*
- *On August 30, 2012, PO Guachichullca patrolled sectors GHJ of the 41st Precinct with PO Steven Allen and she worked from 3:00 p.m. until 11:35 p.m. PO Guachichullca was dressed in uniform and she was assigned to RMP # [REDACTED] a marked sedan.*

Memo Book

PO Guachichullca prepared a detailed memo book entry that was consistent with her CCRB statement. Her memo book shows that she issued summonses to [REDACTED] and [REDACTED]

CCRB Statement

PO Guachichullca was interviewed at the CCRB on May 22, 2013. At approximately 10:40 p.m. on August 30, 2012, PO Guachichullca and PO Allen were responding to a radio job and were driving down [REDACTED] in the Bronx when they observed a group of about five individuals standing in front of [REDACTED] a clean-halls building known by PO Guachichullca as a drug prone location. Because PO Guachichullca was concentrated on the building numbers of the buildings she and PO Allen were passing as they drove, PO Guachichullca could not describe the activity of the group of individuals apart from stating that they were "hanging out." PO Guachichullca and PO Allen continued driving down [REDACTED] until they located the building where they had been dispatched to and disposed of the job.

PO Guachichullca and PO Allen resumed patrol and drove past [REDACTED] a second time, around 11:01 p.m. As they did so they observed PO Cruz and PO Berger approaching on foot the group of individuals standing on the sidewalk in front of [REDACTED]. PO Allen stopped and parked the vehicle and both he and PO Guachichullca exited the vehicle and approached the building in order to provide backup for PO Cruz and PO Berger, who were outnumbered.

When PO Guachichullca arrived in front of the entrance to [REDACTED] PO Cruz and PO Berger were explaining to the group of individuals that they were not permitted to "hang out" in front of the building and they asked the individuals in the group for their identification. PO Guachichullca focused on [REDACTED] and ordered him to go inside if he lived there and told him that he could not remain on the sidewalk in front of the building. When questioned during her CCRB interview why [REDACTED] could not remain where he was, PO Guachichullca stated that [REDACTED] was standing in front of the entrance to the building and he was obstructing pedestrian traffic. When questioned whether there were people either attempting to enter or leave the building, PO Guachichullca stated that there were people standing inside the building but she stated that she did not know if they were attempting to leave the building through the doors that [REDACTED] was standing in front of.

PO Guachichullca repeated her command for [REDACTED] to leave the area about three times, but [REDACTED] refused to leave and he stated that he did not have to leave because he lived in the building. PO Guachichullca then requested [REDACTED] identification so that she could issue him a summons for refusing a lawful order to disperse. [REDACTED] stated that he did not have to provide his identification because he lived in the building, and PO Guachichullca told him that she needed to verify his identity and would have to take him to the stationhouse in order to do so if [REDACTED] did not supply his identification. [REDACTED] said nothing in response.

At that point, PO Guachichullca decided to handcuff [REDACTED] and remove him to the stationhouse. PO Guachichullca reached for [REDACTED] arms in order to grab them and pull them behind his back, but [REDACTED] pushed PO Guachichullca's hand away from his body one time, but he did not say anything. PO Guachichullca reached again and grabbed [REDACTED] by his arms and turned him around so that he was facing the building. PO

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Guachichullca applied handcuffs to one of [REDACTED] wrists and told another officer whom PO Guachichullca could not identify by name at the time of her CCRB interview (she did not recall specifically whether the other officer was PO Berger) that she needed an additional pair of handcuffs in order to cuff [REDACTED]. From there, PO Guachichullca received an additional pair of handcuffs from the officer whom she requested them from and she handcuffed [REDACTED] other wrist about a minute after she initiated the handcuffing process of him. Apart from initially pushing PO Guachichullca's hand away from his body, [REDACTED] did not resist. PO Guachichullca stated that she spoke only to [REDACTED] and [REDACTED].

Neither PO Guachichullca nor PO Berger grabbed [REDACTED] by the back of the neck and neither officer pressed or pushed [REDACTED] in the back, causing him to move forward into the door or the exterior wall of the building. She did not see [REDACTED] face make contact with any part of the building during the time that PO Guachichullca handcuffed him. PO Guachichullca had no knowledge of [REDACTED] sustaining any injuries during this incident and she did not hear him complain of or make any statements about injuries he sustained.

PO Guachichullca did not hear PO Berger make any statements to [REDACTED] and she did not hear either PO Berger or PO Cruz tell [REDACTED] or any other civilian to "Shut the fuck up."

PO Guachichullca stated that during the time that she handcuffed [REDACTED] a small crowd of pedestrians assembled on the sidewalk on the opposite side of the street from [REDACTED] but PO Guachichullca did not notice any civilian approach the entrance to the building or hold any objects in their hands and she did not see any civilian holding a cell phone or record the incident. PO Guachichullca did not see PO Berger draw or remove his firearm and she did not see PO Berger point his firearm at any civilian who was not arrested. PO Guachichullca did not hear PO Berger tell any civilian holding a cell phone, "Get that fucking shit out of here," and she did not hear PO Berger make any statements involving the word "Fuck" to any civilian holding a cell phone. PO Guachichullca did not hear PO Berger make any statements to any civilian regarding their race and she did not hear PO Berger call any civilian a "Nigger" or a "Nigga."

PO Guachichullca did not know what PO Allen did while on scene, but she stated that PO Allen was present during the apprehension of [REDACTED]. The only thing that PO Guachichullca saw PO Cruz do while on scene was request identification from the individuals who were gathered in front of [REDACTED].

PO Guachichullca viewed the video footage of the incident during her CCRB interview (20:00 in interview recording). PO Guachichullca was asked to identify the voice stating, "Shut the fuck up, shut the fuck up" at :17 seconds in the recording, but she stated that she did not recognize the voice; when questioned whether the voice was that of PO Berger, PO Guachichullca stated that it was not because PO Berger has a deep voice; when questioned whether the voice was that of PO Cruz, PO Guachichullca stated that it was not because PO Cruz has an accent. PO Guachichullca denied that the voice in the recording at :17 seconds was her voice and she denied that she ever used the word "fuck" while speaking to any civilian during this incident. PO Guachichullca stated that she did not recall hearing any civilian use the word "fuck" during the incident.

PO Guachichullca was questioned about the individual wearing a white t-shirt who approached the building, but she stated that she did not recall the individual approaching the building during the incident. She was questioned about the identity of the officer approaching this individual and she was asked to identify the voice saying, "Get that fucking shit out of here" and either "Go ahead, nigger" or "Go ahead, nigga," but she stated that she did not recognize the officer or the voice making said comments.

Interview Details

Witness Officer: PO CARLOS CRUZ

- *At the time of the incident, PO Cruz was a 27-year-old Hispanic male with black hair and brown eyes who stood 6'1", 238 lbs.*
- *On August 30, 2012, PO Cruz patrolled sectors FI of the 41st Precinct with PO Scott Berger and he worked from 3:00 p.m. until 11:35 p.m. PO Cruz was dressed in uniform and he was assigned to RMP # [REDACTED] a marked sedan.*

Memo Book

At 11:01 p.m., PO Cruz recorded that he stopped five individuals in front of [REDACTED] and that the five defendants refused to show identification and refused to disperse from the location. A call for additional units was made in order to provide assistance and to transport the defendants to the 41st Precinct stationhouse. All five individuals refused to provide their identification and all five individuals were transported to the 41st Precinct stationhouse and were issued summonses for disorderly conduct – refusing a lawful order. PO Cruz issued summons # [REDACTED] to [REDACTED] and he issued summons # [REDACTED] to [REDACTED] [REDACTED] [REDACTED] and [REDACTED] were also issued summonses for disorderly conduct.

CCRB Statement

PO Cruz was interviewed at the CCRB on May 20, 2013. At approximately 11:01 p.m. on August 30, 2012, PO Cruz and PO Berger were traveling on [REDACTED] in the Bronx when they observed two people positioned inside of [REDACTED]. Because the individual was inside the park after dusk, PO Cruz and PO Berger stopped their vehicle in front of the entrance to the park near the intersection of [REDACTED] in order to approach the individual and issue him a summons for being inside the park after dusk. PO Cruz and PO Berger approached the two individuals and spoke to them briefly. During the time that PO Cruz and PO Berger spoke to the two individuals inside the park, PO Cruz and PO Berger became attracted to loud noise and yelling created by a group of about five males standing in front of [REDACTED] a building directly across from the park's entrance.

The group of five individuals were standing on the sidewalk near the entrance to the building but they were standing closer to the street and the parked cars than to the entrance of the building. There were no other pedestrians on the sidewalk outside the building and no pedestrians gathered on the sidewalk in response to the loud noise created by the group of individuals. PO Cruz could not recall if there were any pedestrians either attempting to enter or exit the building at [REDACTED] and when questioned during his CCRB interview whether the group of individuals were obstructing pedestrian traffic, PO Cruz reiterated that the group of individuals were positioned closer to the street than to the entrance to the building on [REDACTED].

A few of the individuals, but not all of them (PO Cruz could not recall exactly who or how many) held white Styrofoam cups in their hands. PO Cruz did not see a bottle of liquor near the group of individuals and he did not see any of the individuals holding a bottle of liquor. Nonetheless, based on PO Cruz's training and experience, he suspected that the liquid contained in the white foam cups was alcohol, but from where he was positioned on the sidewalk in front of the park on the opposite side of the street from [REDACTED] he could not determine what the substance actually contained in the white Styrofoam cups was. PO Cruz stated that [REDACTED] is a known drug prone location.

PO Cruz and PO Berger approached the group of individuals intent on issuing them summonses for drinking from the white Styrofoam cups and to issue them summonses for being loud. PO Cruz could not recall any statements that any of the individuals made before he and PO Berger approached them. As PO Cruz and PO Berger approached the building on foot, the individuals holding the white Styrofoam cups poured the contents of the cups out underneath parked cars in front of the building.

PO Cruz could not recall who spoke to the group first, but he stated that he recognized [REDACTED] from a previous address and said, "Yo, what's going on, man. You can't have this," referring to the loud noise that the group was making. PO Cruz did not recall if [REDACTED] responded to him. PO Cruz told both [REDACTED] and [REDACTED] that they had to leave the area because they were being too loud, but [REDACTED] and [REDACTED] refused to leave the area and told PO Cruz that they did not have to do so because they lived in the building. PO Cruz repeated his

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command for [REDACTED] and [REDACTED] to leave twice, and when they refused to do so, PO Cruz requested that they provide him with their identification cards so that he could write them summonses for disorderly conduct. Both individuals refused to do so and they both stated that they lived inside the building. Because [REDACTED] and [REDACTED] refused to provide their identification cards, PO Cruz handcuffed each individual. PO Cruz dealt with and spoke only to [REDACTED] and [REDACTED] he did not participate in the handcuffing of any of the other individuals.

PO Cruz did not know what PO Berger was doing during the time that he spoke to [REDACTED] and [REDACTED] because he stated that his attention was focused on [REDACTED] and [REDACTED] and that his back was turned towards PO Berger, whom PO Cruz stated was positioned behind him. PO Cruz did not hear anything that PO Berger said during the time that he [PO Cruz] spoke to [REDACTED] and [REDACTED].

PO Cruz did not know which one of the individuals in the group was [REDACTED] he did not recognize [REDACTED] in the photograph presented to him during his CCRB interview.

Because PO Cruz was focused on [REDACTED] and [REDACTED] and because his back was turned towards PO Berger, PO Cruz did not see PO Berger place any of the other three individuals into handcuffs, and he did not see PO Berger grab any of the other three individuals by the back of the neck or press them forward into the building so that their face made contact with the door to the building. For the same reasons, PO Cruz did not hear what PO Berger said to any of the three other individuals and he did not know or hear what, if anything, the individuals said to PO Berger.

After PO Cruz handcuffed [REDACTED] and [REDACTED] he remained positioned near the entrance of the building holding both individuals by their arms. PO Berger placed a request for additional units over his radio and less than a minute later, numerous units from the 41st Precinct arrived on scene. PO Cruz was asked to identify by name the other units that arrived on scene, but he could only identify PO Veronica Guachichullca; PO Cruz did not know what PO Guachichullca did while on scene.

PO Cruz and PO Berger transported [REDACTED] and [REDACTED] to the stationhouse and [REDACTED] [REDACTED] and [REDACTED] were transported to the stationhouse by another unit whom PO Cruz could not identify.

PO Cruz denied that he or PO Berger said "Shut the fuck up," "Get the fuck out of here," "Get that fucking shit out of here," or "Go ahead, nigger/a" to any civilians on scene. He denied that he or PO Berger made any comments to any civilian on scene about their race and neither he nor PO Berger called anyone a "nigger" or "nigga."

PO Cruz did not recall any civilian approaching [REDACTED] on a bicycle during the stop of the other five individuals who was recording the incident by using his cell phone. PO Cruz did not see PO Berger draw or point his firearm at any civilian and PO Cruz never drew or pointed his firearm at any civilian. PO Cruz did not see PO Berger press his gun into any civilian's back.

PO Cruz viewed the video footage of this incident during his CCRB interview:

At :38 seconds in the recording, PO Cruz identified himself as the officer positioned closer to the right of the entrance. Initially, he stated that he did not know who the officer standing to his left in the video was, but stated, when questioned if it was PO Berger, that it was PO Berger. PO Cruz stated that at the time (:38 seconds in the recording) he was attempting to place [REDACTED] (whom he identified in the video as the individual wearing a red hat) into handcuffs. PO Cruz stated that he could not recognize the voice complaining about "fucking wrists," but he stated that it was one of the civilians who were being handcuffed; he did not know if the voice was that of [REDACTED] whom he stated he was handcuffing during this time.

PO Cruz did not recognize the voice saying, "Shut the fuck up! Shut the fuck up!" (:42 seconds in the recording) but he denied that the voice was his and he did not recognize it to be that of PO Berger's. PO Cruz stated that he did not hear this comment made at the time of the incident because of the loud yelling and noise.

PO Cruz viewed the following video recording segment several times during his CCRB interview and he was asked to identify the officer who approaches an individual dressed in a white t-shirt and a red doo-rag at :39 seconds in the recording. PO Cruz could not identify the officer and he did not recognize the voice making the comment, "Get that fucking shit out of here" and "Go ahead, nigga." He stated that it was not the voice of PO Berger.

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PO Cruz stated that he feared for his safety because he and PO Berger were outnumbered and because the street was dark and that little lighting existed. He did not suspect that either [REDACTED] or [REDACTED] were armed with a weapon.

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Subject Officer: PO SCOTT BERGER

- *At the time of the incident, PO Berger was a 26-year-old white male with brown hair and hazel eyes who stood 6', 200 lbs.*
- *On August 30, 2012, PO Berger patrolled sectors FI of the 41st Precinct with PO Carlos Cruz and he worked from 3:00 p.m. until 11:35 p.m. PO Berger was dressed in uniform and he was assigned to RMP # [REDACTED], a marked sedan.*

Memo Book

At 11:01 p.m., PO Berger recorded that he stopped five males in front of [REDACTED]. He noted that all five males refused to disperse from the location and that all five males refused to provide identification. All five males were handcuffed and transported to the 41st Precinct stationhouse so that PO Berger, PO Cruz, and PO Guachichulca could verify their identities. PO Berger recorded that he placed a radio call for additional units for assistance and for prisoner transport. PO Berger noted that [REDACTED] was in front of the location pointing an unknown object at PO Berger; PO Berger drew his firearm at [REDACTED] because he feared that [REDACTED] was pointing a firearm at him. PO Berger prepared a Stop, Question & Frisk report for suspected criminal possession of a weapon.

CCRB Statement

PO Berger was interviewed at the CCRB on May 20, 2013. At approximately 11:01 p.m. on August 30, 2012, PO Berger and PO Cruz observed two individuals inside of [REDACTED], a New York City park located in the Bronx that closes at dusk. PO Berger and PO Cruz stopped their vehicle on [REDACTED] and approached the two individuals at the entrance to the park and questioned them about why they were in the park. During the time that PO Berger and PO Cruz spoke to the two individuals, whom they did not write summonses for, PO Berger and PO Cruz became attracted to a commotion and loud yelling of a group of approximately four individuals positioned on the sidewalk in front of [REDACTED] a clean halls building located across the street from [REDACTED] that PO Berger knows as a drug prone location; PO Berger stated that both he and PO Cruz have made numerous narcotics related arrests at [REDACTED] during their careers as New York City police officers. There were no other pedestrians on the sidewalk in front of [REDACTED] gathered as a result of the loud noise caused by the group of four individuals. Because PO Berger did not observe any pedestrians either attempting to enter or exit the building located at [REDACTED] he stated that the group of approximately four males gathered on the sidewalk in front of the building were not obstructing pedestrian traffic either into or out of the building.

PO Berger and PO Cruz observed the group for less than one minute before they mutually decided to walk across the street towards [REDACTED] and order the group of males to disperse. As they neared the building, several of the males (PO Berger could not quantify how many or identify any of the individuals by name) tossed white Styrofoam cups containing liquid beneath cars parked in front of the building. Experience working in the south Bronx has taught PO Berger that people routinely fill such cups with alcohol and drink from them on streets outside their home; based on his experience, PO Berger suspected that the liquid contained in the white Styrofoam cups was alcohol. At no point did PO Berger smell alcohol either in the street where the individuals had deposited their cups or from the breathe emanating from the individuals whom he spoke to.

PO Berger and PO Cruz approached the group of males and asked them what they were doing there. PO Cruz spoke to [REDACTED] and [REDACTED] the individuals he later summonsed, and PO Berger spoke to the other two individuals. The individuals in the group told PO Berger and PO Cruz that they each lived in the building, and PO Berger and PO Cruz told them that because it was 11 p.m. and was a weekday (Thursday), and because people had to work and go to school the following day, the group could not remain where they were being so loud. PO Berger ordered the individuals whom he spoke to one time to leave the area. The individuals in the group reiterated that they lived in the building and that they could remain where they were. Intent on issuing the individuals summonses for failing to disperse, PO Berger asked the individuals whom he spoke to for their identification cards, but the individuals again reiterated that they lived in the building and that they did not have to supply him with their identification cards. PO Cruz requested identification from [REDACTED] and [REDACTED] and when they told PO

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Cruz that they lived in the building and did not have to provide identification to him, PO Cruz handcuffed both [REDACTED] and [REDACTED].

During the time that PO Berger and PO Cruz spoke to the individuals in front of [REDACTED] [REDACTED] (identified by PO Berger) approached PO Berger and PO Cruz from behind, but because PO Cruz was facing the building holding [REDACTED] and [REDACTED] by the handcuffs he applied to them, PO Cruz did not see [REDACTED] approach the building and he did not see PO Berger interact with him; PO Berger did not speak to PO Cruz after the incident about [REDACTED].

[REDACTED] walked towards PO Berger and came within "a foot or two" of PO Berger without making any physical contact with him and without saying anything. [REDACTED] held an object in one of his hands and extended his arm and pointed the object at PO Berger for about five seconds. Because the street did not have operating street lights, and because the only light on the street emanated from the entrance to [REDACTED] PO Berger could not see clearly what the object that [REDACTED] pointed at him was or how large it was. PO Berger could not recall the color of the object when interviewed at the CCRB, and he stated that there was no light emanating from the object.

When questioned during his CCRB interview what he thought the object [REDACTED] held was, PO Berger stated, "it appeared to be a weapon, possibly a firearm." When asked specifically why he thought the object held by [REDACTED] was a firearm, PO Berger stated that the way [REDACTED] held the object in his hand and pointed it towards PO Berger was consistent with how one would hold and point a firearm. PO Berger also cited the correlation between drugs and guns and he reiterated that several members of the group had tossed white Styrofoam cups containing what PO Berger suspected was alcohol underneath parked vehicles as he and PO Cruz approached the building; PO Berger stated that the Styrofoam cups were never recovered from the street and that the presence of alcohol was never confirmed.

Because PO Berger suspected that the object held and pointed towards him by [REDACTED] was a firearm, he feared for his safety and for his life. PO Berger removed his firearm from its holster with his right hand and he used his left hand and extended it in front of his body to protect himself; he made no physical contact with [REDACTED]. PO Berger then pointed his firearm at [REDACTED] and ordered him to "Get back." PO Berger did not recall saying anything else to [REDACTED] and, specifically, he did not recall using the word "fuck" in speaking to [REDACTED]. PO Berger did not recall PO Cruz using the word "fuck" in speaking to any civilians during this incident. PO Berger denied making any comments to [REDACTED] about his race and he denied calling [REDACTED] either a "nigger" or "nigga." PO Berger did not recall telling [REDACTED] "Get that fucking shit out of here" and he did not recall using the word "shit" in speaking to [REDACTED].

PO Berger stated that pointed his firearm at [REDACTED] for less than five seconds and stepped forward towards [REDACTED] without making physical contact with him. PO Berger made no contact with [REDACTED] with his firearm and he made no attempt to remove the object that [REDACTED] was holding from his hands. [REDACTED] stepped backwards onto the street and PO Berger holstered his weapon and returned to PO Cruz and the individuals standing in front of the entrance to [REDACTED]. PO Berger had no further contact with [REDACTED] and he did not know what [REDACTED] did with the object he was holding once he (PO Berger) turned around and walked back towards the entrance to [REDACTED].

PO Berger stated that [REDACTED] was handcuffed by additional officers (he was able to identify PO Guachichulca, Sgt. Williams, and Sgt. Cornier by name), who arrived on scene in response to a call for backup PO Berger placed; PO Berger could not recall at what point during the incident he called for additional units, but he stated that he and PO Cruz were the only two officers on scene at the outset of the stop and when [REDACTED] approached him while holding the unidentified object. PO Berger stated that [REDACTED] was brought back to the stationhouse and was issued a summons for failing to disperse. At the stationhouse, when [REDACTED] personal items were being vouchered, PO Berger discovered for the first time that the object held by [REDACTED] was a cell phone.

Upon arriving back in front of the entrance to [REDACTED] PO Berger placed one of the individual whom he had initially spoken to into handcuffs by grabbing their hands. The individual (whom PO Berger could not identify by name; when questioned, he did not know which individual was [REDACTED] resisted by pulling his arms away

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from PO Berger as PO Berger reached for them. PO Berger reached again, gained control of the individual's arms, spun him around so that the individual was facing the building, and pulled the individual's arms behind his back and handcuffed him. PO Berger denied that the individual's face made contact with the building or with the door of the building and he denied that he or any other officer grabbed the individual whom he handcuffed by the back of the neck. PO Berger ordered the individual, "Give me your hands!" PO Berger denied that he or PO Cruz told any civilian to "Shut the fuck up!"

PO Berger viewed the video footage of the incident during his CCRB interview.

PO Berger listened several times to the audio at :18 seconds in the recording and the comment, "Shut the fuck up." He denied that it was his voice because his voice is not as deep as the one in the audio recording making said comment. He stated that he did not recognize the voice as that of PO Cruz because he stated that PO Cruz has a heavy Hispanic accent. He stated that though PO Guachichulla is depicted in the video and was on scene (something he had previously stated during his CCRB interview did not happen; he stated that PO Guachichulla arrived only after he interacted with [REDACTED] the voice was not that of PO Guachichulla's because her voice is not as deep as the one in the audio recording. PO Berger could not identify the voice making the comment, "Shut the fuck up!"

PO Berger identified himself as the officer walking towards [REDACTED] (whom he stated was dressed in red and a white t-shirt) and he recognized his voice saying, "Get that fucking shit out of here" and as the one making the comment that sounded like what he thought was the use of the word "nigger" or "nigga." PO Berger stated that he did not remember making either of these comments and he stated that he was in disbelief about using either the word "nigger" or "nigga" because, as he stated, he would "never ever" say those things because his girlfriend is Hispanic and because he has worked in the south Bronx, a community comprised largely of Hispanic and black residents, his entire career. PO Berger stated that at the time the video depicts him making these comments, he was fearful for his safety and for his life. He stated that he made the comments based on this fear and as a mode of getting [REDACTED] to step away and to stop pointing the unidentified object, which at the time he suspected was a weapon, at him. He stated that there were no other reasons why he used the language depicted in the video.

During his CCRB interview, PO Berger reviewed the Stop, Question & Frisk Report he prepared for [REDACTED]. He stated that he frisked [REDACTED] after [REDACTED] was placed into handcuffs by the additional responding officers and before he was placed into the police vehicle and transported to the stationhouse. When questioned, PO Berger stated that he check-marked the box indicating "inappropriate attire/possibly concealing a weapon" to refer to the long white t-shirt that [REDACTED] was wearing that extended below his waistband and which concealed his pockets. PO Berger stated that he did not see any bulges on [REDACTED] person. When questioned, PO Berger stated that he check-marked the box "furtive movements" to refer to the object that [REDACTED] held in his hand and pointed towards PO Berger. PO Berger stated that the box he check-marked about [REDACTED] reaching for a weapon referred to [REDACTED] actually holding what he thought was a weapon and pointing it towards him; at no point did PO Berger suspect that [REDACTED] was armed with another weapon that he was not holding or pointing at PO Berger.

Interview Details

Subject Officer: PO VERONICA GUACHICHULLCA

- *At the time of the incident, PO Guachichullca was a 25-year-old Hispanic female with black hair and brown eyes who stood 5'4", 145 lbs.*
- *On August 30, 2012, PO Guachichullca patrolled sectors GHJ of the 41st Precinct with PO Steven Allen and she worked from 3:00 p.m. until 11:35 p.m. PO Guachichullca was dressed in uniform and she was assigned to RMP # [REDACTED] a marked sedan.*

Memo Book

PO Guachichullca prepared a detailed memo book entry that was consistent with her CCRB statement. Her memo book shows that she issued summonses to [REDACTED] and [REDACTED]

CCRB Statement

PO Guachichullca was interviewed at the CCRB on May 22, 2013. At approximately 10:40 p.m. on August 30, 2012, PO Guachichullca and PO Allen were responding to a radio job and were driving down [REDACTED] in the Bronx when they observed a group of about five individuals standing in front of [REDACTED] a clean-halls building known by PO Guachichullca as a drug prone location. Because PO Guachichullca was concentrated on the building numbers of the buildings she and PO Allen were passing as they drove, PO Guachichullca could not describe the activity of the group of individuals apart from stating that they were "hanging out." PO Guachichullca and PO Allen continued driving down Longwood Avenue until they located the building where they had been dispatched to and disposed of the job.

PO Guachichullca and PO Allen resumed patrol and drove past [REDACTED] a second time, around 11:01 p.m. As they did so they observed PO Cruz and PO Berger approaching on foot the group of individuals standing on the sidewalk in front of [REDACTED]. PO Allen stopped and parked the vehicle and both he and PO Guachichullca exited the vehicle and approached the building in order to provide backup for PO Cruz and PO Berger, who were outnumbered.

When PO Guachichullca arrived in front of the entrance to [REDACTED] PO Cruz and PO Berger were explaining to the group of individuals that they were not permitted to "hang out" in front of the building and they asked the individuals in the group for their identification. PO Guachichullca focused on [REDACTED] and ordered him to go inside if he lived there and told him that he could not remain on the sidewalk in front of the building. When questioned during her CCRB interview why [REDACTED] could not remain where he was, PO Guachichullca stated that [REDACTED] was standing in front of the entrance to the building and he was obstructing pedestrian traffic. When questioned whether there were people either attempting to enter or leave the building, PO Guachichullca stated that there were people standing inside the building but she stated that she did not know if they were attempting to leave the building through the doors that [REDACTED] was standing in front of.

PO Guachichullca repeated her command for [REDACTED] to leave the area about three times, but [REDACTED] refused to leave and he stated that he did not have to leave because he lived in the building. PO Guachichullca then requested [REDACTED] identification so that she could issue him a summons for refusing a lawful order to disperse. [REDACTED] stated that he did not have to provide his identification because he lived in the building, and PO Guachichullca told him that she needed to verify his identity and would have to take him to the stationhouse in order to do so if [REDACTED] did not supply his identification. [REDACTED] said nothing in response.

At that point, PO Guachichullca decided to handcuff [REDACTED] and remove him to the stationhouse. PO Guachichullca reached for [REDACTED] arms in order to grab them and pull them behind his back, but [REDACTED] pushed PO Guachichullca's hand away from his body one time, but he did not say anything. PO Guachichullca reached again and grabbed [REDACTED] by his arms and turned him around so that he was facing the building. PO Guachichullca applied handcuffs to one of [REDACTED] wrists and told another officer whom PO Guachichullca could not identify by name at the time of her CCRB interview (she did not recall specifically whether the other officer was PO Berger) that she needed an additional pair of handcuffs in order to cuff [REDACTED]. From there, PO Guachichullca received an additional pair of handcuffs from the officer whom she requested them from and she handcuffed [REDACTED]

Interview Details

other wrist about a minute after she initiated the handcuffing process of him. Apart from initially pushing PO Guachichullca's hand away from his body, [REDACTED] did not resist. PO Guachichullca stated that she spoke only to [REDACTED] and [REDACTED].

Neither PO Guachichullca nor PO Berger grabbed [REDACTED] by the back of the neck and neither officer pressed or pushed [REDACTED] in the back, causing him to move forward into the door or the exterior wall of the building. She did not see [REDACTED] face make contact with any part of the building during the time that PO Guachichullca handcuffed him. PO Guachichullca had no knowledge of [REDACTED] sustaining any injuries during this incident and she did not hear him complain of or make any statements about injuries he sustained.

PO Guachichullca did not hear PO Berger make any statements to [REDACTED] and she did not hear either PO Berger or PO Cruz tell [REDACTED] or any other civilian to "Shut the fuck up."

PO Guachichullca stated that during the time that she handcuffed [REDACTED] a small crowd of pedestrians assembled on the sidewalk on the opposite side of the street from [REDACTED] but PO Guachichullca did not notice any civilian approach the entrance to the building or hold any objects in their hands and she did not see any civilian holding a cell phone or record the incident. PO Guachichullca did not see PO Berger draw or remove his firearm and she did not see PO Berger point his firearm at any civilian who was not arrested. PO Guachichullca did not hear PO Berger tell any civilian holding a cell phone, "Get that fucking shit out of here," and she did not hear PO Berger make any statements involving the word "Fuck" to any civilian holding a cell phone. PO Guachichullca did not hear PO Berger make any statements to any civilian regarding their race and she did not hear PO Berger call any civilian a "Nigger" or a "Nigga."

PO Guachichullca did not know what PO Allen did while on scene, but she stated that PO Allen was present during the apprehension of [REDACTED]. The only thing that PO Guachichullca saw PO Cruz do while on scene was request identification from the individuals who were gathered in front of [REDACTED].

PO Guachichullca viewed the video footage of the incident during her CCRB interview (20:00 in interview recording). PO Guachichullca was asked to identify the voice stating, "Shut the fuck up, shut the fuck up" at :17 seconds in the recording, but she stated that she did not recognize the voice; when questioned whether the voice was that of PO Berger, PO Guachichullca stated that it was not because PO Berger has a deep voice; when questioned whether the voice was that of PO Cruz, PO Guachichullca stated that it was not because PO Cruz has an accent. PO Guachichullca denied that the voice in the recording at :17 seconds was her voice and she denied that she ever used the word "fuck" while speaking to any civilian during this incident. PO Guachichullca stated that she did not recall hearing any civilian use the word "fuck" during the incident.

PO Guachichullca was questioned about the individual wearing a white t-shirt who approached the building, but she stated that she did not recall the individual approaching the building during the incident. She was questioned about the identity of the officer approaching this individual and she was asked to identify the voice saying, "Get that fucking shit out of here" and either "Go ahead, nigger" or "Go ahead, nigga," but she stated that she did not recognize the officer or the voice making said comments.

Interview Details

Witness Officer: PO STEVEN ALLEN

- *PO Allen, 33 years old at the time of incident, is a black male who stands 5'10", weighs 215lbs, has black hair and brown eyes.*
- *On August 30, 2012, PO Allen worked from 3:00 p.m. to 1:35 a.m. the following day, and was assigned to Patrol Sector GHJ with PO Guachichulla. They were assigned to a marked RMP.*

Memo Book

PO Allen has no entries at 11:00 p.m. At 11:40 p.m., he transported 3 males to Bronx Central Booking.

CCRB Testimony

PO Allen stated he did not recall this incident very clearly. He stated he and his partner, PO Guachichulla, responded to a call for additional officers at [REDACTED]. When they arrived PO Allen observed PO Carlos Cruz and PO Scott Berger attempting to place two individuals under arrest by placing their hands behind their back. The individuals were resisting arrest by moving their hands around. Additional individuals were arrested, as well, but PO Allen did not recall what they were doing at this time or when or where they were handcuffed. PO Allen did not handcuff any individuals, and did not recall assisting any officers handcuff anyone. PO Allen did not recall what PO Guachichulla did on scene; he did not recall seeing her handcuff anybody. PO Allen did not see PO Berger grab any individual's neck. PO Allen did not recall what the civilians being handcuffed were saying, if anything.

PO Allen stated there was a crowd of people watching the incident, but could not estimate how many people were there. PO Allen stated he was primarily focused on keeping them back from the other officers and keeping the scene calm. He did not recall any people in the crowd interacting with PO Berger or PO Cruz. PO Allen stayed on the sidewalk keeping the crowd back; he did not recall issuing any civilians any instructions. PO Allen did not specifically recall seeing any civilians filming the incident with a cell phone or an iPad, but assumed people were filming. PO Allen did not hear PO Berger tell any civilian to, "Get that shit out of here," nor did he hear PO Berger call any civilian a "nigger" or "nigga." PO Allen did not hear PO Berger or PO Cruz use any profanities throughout the incident, nor did he hear PO Berger make any comments based upon race. PO Allen stated four individuals were taken in a police van to the stationhouse. He did not see any individuals being issued summonses while on scene. PO Allen did not recall seeing any supervisors on scene. Upon reviewing the roll call, PO Allen stated Sgt. Porteus may have been on scene, as he was PO Allen's supervisor that night, but did not specifically recall so. PO Allen stated there were more than 10 officers on scene, but could not recall which officers, at what point they arrived, or what they did.

PO Allen reviewed the video footage of the incident. He did not recognize himself as any of the officers depicted in the video, nor did he recall witnessing this portion of the incident. PO Allen believed he was further up the block, closer to the bodega at the corner of [REDACTED]. He noted that he remembered more civilians present, watching the incident than was depicted in the video. PO Allen could not identify any of the officers in the video. He did not recognize the voice of the individual who said, "Shut the fuck up," nor did he recognize the voice that said, "Get that shit out of here. Go ahead, nigga, go ahead."